IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Pemaram & Ors. Vs. JVVNL & Ors.
S.B. CIVIL FIRST APPEAL NO.256/04

Against judgment and decree dated 20.02.2004 passed by learned District Judge, Balotra in Civil Original Suit No. 22/1999 – Pemaram & Ors. Vs. JVVNL & Ors.

DATE OF PRONOUNCEMNT OF JUDGMENT :: 12TH December,2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Jitendra Chopra for appellants
Mr. Sumeet Mehta for respondents.

BY THE COURT:

Deceased Mahendra Borana, who was on his cycle while going for delivering milk to customers in order to earn bread, would have not even dreamt that he would never return alive. He came in contact with a live electric wire lying on the road and due to electrocuted, he died instantaneously at the spot leaving behind him the family members who were dependent on him.

Appellant-plaintiffs have filed this appeal under Sec. 96 CPC for enhancing the amount of damages awarded by learned District Judge, Balotra in Civil Original Suit No.22/1999 with the prayer to decree the suit as per their claim with cost and interest.

The claim as has been submitted by the appellant-plantiffs before the learned District Judge inter-alia states that due to sheer negligence on the part of the employees of the Rajasthan State Electricity Board (Now Jodhpur Vidhyut Vitran Nigam Limited) the said incident took place and the young son of appellants No.1 & 2 died. The appellants No.1 & 2 are father and mother of the deceased and the appellant No.3 to 7 are sisters while appellant No.8 is his brother. It was stated that the deceased who was studying in class X was a brilliant student and had passed his class IX examination in 1st Division. By supplying milk in morning and evening he was earning Rs.3,000/- per month and thereby helping the entire family to pull

on. An amount of Rs.14,60,000/- was claimed as loss of income and monetary help and Rs.4,00,000/- was claimed for pain, sufferings and mental shock suffered by the family members. In all, damages to the tune of Rs.18,60,000/- were claimed with interest @12%.

Respondent-defendants filed a written statement jointly and while admitting the death of deceased due to his coming in contact with live wire, their stand was that the incident took place due to natural calamity and none of their employees was at fault.

The learned trial Court framed issues on the pleadings of parties as under:

(i) Whether on account of negligence of defendants and its employees the death of Mahendra occurred on 16.10.1998 at 6:15 AM in Siwana by coming in contact with the broken live electric wire?

(ii) Whether the plaintiffs are entitled to receive the amount of damages as per suit?

(iii) Whether the suit in absence of notice under Sec.80 CPC is

not maintainable?

(iv) Whether the plaintiffs have received Rs.20,000/- in complete satisfaction of the damages and as such the suit is not maintainable?

(v) Whether the defendants are entitled to receive Rs.5,000/- as expenses?

(vi) Relief?

In support of its case, plaintiff examined himself as PW1, got examined PW2 Gheesu Sha and tendered some documents in evidence. The defendant-respondents examined DW1 Hanuman Ram, DW2 Bhanwar Singh Lineman, and helpers DW3 Jagdish Ram and DW4 Ganpat Singh. Some documents have also been tendered in defence by the defendants.

The learned trial Court while deciding Issue No.1 has held that in view of statement of plaintiff and PW2 Gheesu Sha and also in view of enquiry Report Ex.8, it was amply proved that on account of negligence on the part of the defendant-respondents the incident

took place which caused death of Mahendra. The learned trial Court in relation to Issue No.2 has held that the deceased Mahendra was 17 years of age at the time of his death and was studying in Class X. With regard to the earning on the basis of statement of plaintiffs, a lumpsum amount of Rs.1,50,000/- was assessed as pecuniary loss to the plaintiffs. The learned trial Court further found that on account of mental agony and pain, the plaintiffs were entitled for Rs.50,000/-. In all the entitlement of the plaintiffs was considered 2 lakhs rupees. Issue No.4 was in relation to Rs.20,000/- paid by the defendants to plaintiffs as final payment with regard to compensation. The trial Court held that at the initial stage an amount of Rs.20,000/- was immediately paid and that cannot be treated to be a final settlement between the parties and the plaintiffs were entitled to maintain the suit for the claim. Issue No.3 in relation to the notice has been decided against the defendants as the defendants could not prove

this issue. Issue No.5 was in relation to incurred expenses amounting to Rs.5,000/- which was decided in favour of the plaintiffs and against the defendants. The suit was decreed after deducting Rs.20,000/- rupees which were paid earlier to the plaintiffs. The compensation awarded by the trial Court, thus, was Rs.1,80,000/-.

The learned counsel for the plaintiffs argued that the trial Court has not properly assessed the compensation and in lumpsum Rs.1,50,000/- have been assessed as total pecuniary loss on account of earning of the deceased. It has been submitted that the deceased being a young lad of 17 years with bright career ahead of him as his education record is excellent and as the deceased was also an earning hand and was earning Rs.150/- per day, therefore, proper calculation and assessment was required to be made in relation to the pecuniary loss suffered by the plaintiffs on account of untimely death of

Mahendra which was the result of negligence and failure in performance of statutory duties imposed upon the defendants.

On the other hand, it has been contended that there has been proper assessment of evidence and the compensation which has been awarded by the Court is based on proper appreciation of evidence, therefore, it requires no interference. It has also been submitted that the matters were finally settled before filing the suit as a sum of Rs.20,000/- was paid to the plaintiffs earlier in relation to the final settlement of the claim of the plaintiffs. No other argument was raised on behalf of the respondent-defendants.

I have considered the submissions made before me.

In the present matter, the points which require consideration are as under:

(i) Whether the incident which has taken place on 16.10.1998 resulting into death of Mahendra deceased was on account of negligence and non performing the statutory duties cast on the dependents?

(ii) Whether the compensation/damages have been assessed properly or the same requires to be enhanced?

(iii) Whether the plaintiff is entitled to interest?

(iv) Whether the matter was finally settled between the parties after making payment of Rs.20,000 to the plaintiffs and the suit was not maintainable in view of Sec. 80 of the CPC?

Now I propose to deal with the points framed.

It is to be seen that the learned trial Court has framed Issue No.1 with regard to negligence of the defendants in performing

their duties and as the death of Mahendra took place on account of coming into contact with a broken live electric wire lying on the road. In the plaint, it has been stated that on 16.10.1998 when deceased was going for delivering milk to the customers on cycle in the morning at about 6:15 AM, he came in contact with a live electric wire which had fallen on the road and on account of that he died at the spot. In the written statement, the factum of death on account of broken electric wire lying on the road has not been disputed. The version of the defendants is that the previous night was stormy and wind was blowing in a very fast speed, as such the pole wire broke and fell on the earth and the deceased also did not take care to see that the wire was lying on the road and therefore the defendants cannot be held responsible for the incident which has taken place. In substance, the stand of defendants in the written statement was that the incident took place due to natural calamity and none of their employees

could be held responsible for the incident.

PW1 Pemaram, the father of deceased Mahendra, has stated that his son Mahendra died on 16.10.1998 on account of his coming into contact with electric wire lying on the road at about 6 AM on the day of incident. It has also been stated that at that time his son was on a bicycle with a drum of milk and the milk was for distribution amongst customers. He has also stated that the incident took place on account of negligence and non-performance of duties by the defendants. PW2 Gheesu Sha has supported the version of PW1 Pemaram and stated that he had seen the dead body of deceased at the spot. The place of incident according to him was near the staff quarters of Water Works Department. The witnesses of defendants DW2 Hanuman Ram, Junior Engineer and other employees of defendants Bhanwar Singh, Jagdish Bisnhnoi and Fateh Singh have admitted in their statements that on 16.10.1998 the incident took place and

as a result of which Mahendra died. They have all stated that since on the previous night on account of heavy rains and storm, the wind was blowing in a very fast speed, there was breakage of the electric wire from the pole and deceased Mahendra inadvertently came in contact with the wire lying on the road which resulted into his death.

Ex.18 is relevant, which is a reply in an enquiry held against DW3 Jagdish Ram in connection with the negligence of the employees of the defendants. The documents has been tendered in evidence and it is the document which is of defendants. It clearly states that before the incident in relation to deceased Mahendra DW3 Jagdish Ram had already intimated the fact that the employees of Water Works Department residing near the place of incident in staff quarters were using the electricity without connection by putting Aakda (hook) on the wires in an illegal manner. DW3 Jagdish Ram apprehended that on account of

illegal act of the employees of the Water Works Department some untoward incident could take place.

Ex.17 is the reply filed by DW2 Bhanwar Singh. He has also stated what has been stated by DW3 Jagdish Ram. DW4 Ganpat Singh also faced enquiry and his version in Ex.16 was also to the same effect. All the persons, when they came in the witness box, stated a different version that on account of storm wind was blowing fast on the night previous to the incident and it resulted in breaking of the electric wire from the pole, which appears to be not a correct version of the incident in view of their replies filed in the enquiry held against them.

In view of the statements of the plaintiffs and their witnesses as also the witnesses produced on behalf of the defendants, it is amply proved that the employees of the defendants infact had the knowledge prior to

the incident that the employees of Water Works Department residing in staff quarters were indulged in illegal activities for obtaining electricity by throwing wire on the pole with the help of hook and committing theft and that was probably the reason as per the replies filed by the defendants' witnesses in an enquiry conducted by the Corporation. It cannot be denied that the defendants and their employees are duty bound to take care of the electric poles fixed on the roads, streets, ways etc and to maintain them properly so that no untoward incident may take place. It has not been denied in the written statement that it was not the duty of defendants to supervise the electric wiring in the city and town etc. By supplying electricity, the Corporation is charging money and it owes its responsibility for the negligence on the part of its employees. In the statements of defendant-respondents, the factum of death of Mahendra has since been accepted and as discussed hereinabove, the defendands have tried to make

out a different case in the Court by saying that the incident took place due to natural calamity, it infact strengthens the case of the plaintiffs that the employees of the defendant Corporation were negligent in performing their statutory duties by properly maintaining and taking care of the electric poles in village Siwana inspite of the fact that it was well within the knowledge of the employees of the defendants as has been discussed and is clear from a bare perusal of Ex.16 to 18.

In view of foregoing discussions, the answer to Point No.1 is that the learned trial Court has correctly came to the conclusion while deciding Issue No.1 that the incident took place on account of negligence of the defendants employees, which resulted in the death of Mahendra deceased.

Point No.2

Before proceeding further, it is proper to see the law laid down in such matters

of torts while assessing the quantum of compensation.

In Rajkot Municipal Corporation Vs. Manjulen Jayantilal Nakum & Ors., decided on 17.01.1997, the Hon'ble Supreme Court while considering the question of liability for negligence in causing death of one Jaynatilal due to sudden fall of a tree while he was passing on the railway platform, dealt the matter at great length and while considering English principles of common law, observed:

> "The tortious liability falls into one of the three categories, viz., (a) some intentional wrong doing (b) negligence and © strict liability. In this case, we are concerned with negligence on the part of the appellant-Corporation in maintaining the trees on the road-sides. The principle evolved by the courts in England is that a reasonable foresight of harm to persons whom it is foreseeable or is likely to harm by one's carelessness is essential. For the plaintiff to succeed in an action for negligence the plaintiff requires to prove that (i) the defendant is under a duty to take care; (ii) the burden of proof owed by the plaintiff has

been discharged by the proof of breach of duty and (iii) the breach of the duty of care is the cause for damage suffered by the plaintiff. Breach of duty raises factual question whether the required standard of conduct has been reached. It is only relevant if a duty of care has been held to exist in law. Damage similarly is also confined to the enquire of facts. Duty of care, on the other hand, is far more crucial concept as it fixes the boundaries of tort of negligence. The regulation of duty of care envisaged in Donoghue's principle, in its widest terms, has a reasonable foresight of harm to persons whom it is foreseeable or is likely to be harmed by one's carelessness and has in turn made it easy to hold in subsequent cases that there should be liability for negligently inflicting damage in new situations not covered by previous case law because damage was foreseeable. If want of duty of care is established, there comes to exist foreseeability of the damage and sufficient proximate relationship between the parties and it must be just and reasonable to impose such a duty. . . . . By the omission to perform the duty to maintain the trees in healthy condition or to cut off the trees in decaying condition, the Corporation entails with liability to make good the loss/damages caused to the respondents. The High Court, therefore, has not committed any error of law warranting interference. The

> diverse contentions give rise to the questions: whether the appellant-Corporation owes a duty of care to maintain the trees as a statutory duty and whether the cause of death of Jayantilal has proximate relationship with the negligence giving rise to tortious liability, entailing payment of compensation to the respondents? The marginal note of Section 66 of the Act indicates "Matters which may be provided for by the Corporation at its discretion". It envisages that the Corporation may in its discretion, provide from time to time, wholly or partly for all or any of the following matters, viz, (viii) "the planting and maintenance of trees of road-sides and elsewhere". Under Section 202 of the Act, all streets within the city vest in the Corporation and are under the control of the Corporation.

The Court referred to the dictionary meaning of 'tort' and said:

> In "Blacks Law Dictionary" (6th Edn.) at page 1489, `tort' is defined as violation of duty imposed by general law or otherwise upon all persons occupying the relation to each other involved in a given transaction. There must always be a violation of some duty owed to plaintiff and generally such a duty must arise by operation of law and not by mere agreement of the

parties. "A legal wrong is committed upon the person or property, independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual". Negligence is failure to use such care as a reasonable prudent and careful person would use, under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Negligence also is an omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Negligence and tort have been viewed without elaborately embarking upon the definition of "tort" applicable to varied circumstances and the scope of negligence in its wider perspective. Let us proceed to consider the meaning of "negligence" in the context of tort liability arising in this case. In every case giving rise to tortious liability, tort consists of injury and damage due to negligence. Claim for injury and damage may be founded on breach of

> contract or tort. We are concerned in this case with tort. The liability in tort may be strict liability, absolute liability or special liability. The degree of liability depends on degree of mental element. The elements of tort of negligence consist in - (a) duty of care; (b) duty is owed to the plaintiff; (c) the duty has been carelessly breached. Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognised by law to avoid conduct fraught with unreasonable risk of damage to others."

In another case of M.S. Grewal & Anr. Vs. Deepchand Sood & Ors., decided on 24.08.2001, the Hon'ble Apex Court observed:

> "Incidentally, this Court in C.K. Subramania Iyer and Others v. T. Kunhikuttan Nair and Six Others [(1969) 3 SCC 64] while dealing with the matter of fatal accidents laid down certain relevant guidelines for the purpose of assessment of compensation. Paragraph 13 of the report would be relevant on this score and the same is set out hereinbelow:
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> 13. The law on the point arising for decision may be summed up thus: Compulsory damages under

Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration. Emphasis supplied)

The observations as above, undoubtedly lays down the basic guidance for assessment of damage but one redeeming feature ought to be noted that compensation or damages cannot be awarded as a solatium but to assess the same with reference to loss of pecuniary benefits. In the decision last noted [(1969) 3 SCC 64] this Court placed strong reliance on two old decisions of the English Courts to wit: Franklin v. The South East Railway Company (157 English Reports 3 H & N, p.448) wherein Pollock, C.B. stated :

We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of life."

The Court further said:.

"The multiplier method is logically sound and legally well-established method of ensuring a just compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary

circumstances and very exceptional cases.

In the decision of Susamma Thomas (supra), this Court in paragraphs 7 & 8 of the report observed:

7. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the fathers death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd. [1942 AC 617] which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus except where there is express statutory

> direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. (Per Lord Macmillan in Davies v. Powell) Lord Wright in the same case said, The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R..M.K. Veluswami [AIR 1962 SC 1] where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained".

After carefully examining the law laid down by the Hon'ble Apex Court, it appears that a tortuous liability can be fixed on breach of

duty imposed upon the defendant. It further appears that pecuniary loss caused in such matters are required to be assessed. It further appears that while assessing a claim the dependency aspect of the claimant and the future prospects etc are also to be taken into consideration. It has also been laid down by the Apex Court that while calculating compensation, the multiplier can also be used for the purposes of dependency of the claimants on account of death of the deceased taking into consideration his earnings etc.

In the present case, as discussed, in relation to Point No.1 framed by me that the defendant Corporation's employees were negligent in performing their duties and it was well within the knowledge of the employees of the Corporation that some untoward incident could take place. This fact that in an illegal manner the Water Works Employees living in the quarters with the help of Aakara were making theft of electricity and the witnesses examined

in the Court on the side of defendants in their reply on account of the act of the Water Works Employees apprehended some untoward incident. Thus, there is no hesitation in reaching to the conclusion that the defendants' witnesses in the statements before the Court have stated something different i.e. about storm and fast blowing of wind on previous night of the incident whereas the actual fact was something different as has been discussed hereinabove. There is a statutory duty imposed upon the Corporation to maintain the electric poles meant for supply of electricity on roads, streets etc. and if they fail to take proper care and do not perform their duties and on account of their negligence any untoward incident happens then the Corporation can very well be held responsible for the loss suffered by the claimants as is the case in the present matter.

Now, it is to be seen that the learned trial Court in lumpsum has awarded a sum of

Rs.1,50,000 for the total dependency of the plaintiffs on the deceased's earnings and a sum of Rs.50,000/- has been assessed in relation to mental agony, pain etc. The father of deceased has categorically stated that he was a milk supplier and his son the deceased was also helping him and earning Rs. 150/- per day. It has also come on record that the boy was a brilliant chap. The documents which have been produced indicate that he got 1st Division in Class IX and his career probably would have been bright. It appears that the earning of the deceased has been stated at the higher side by the plaintiff. In the facts and circumstances stated in the plaint and the statements of the witnesses and also on the basis of the statements of the plaintiff witnesses, it has been established that the deceased was a helping hand to his family, and as such after carefully considering the entire facts and circumstances of the case, I think it proper to assess the monthly help of the deceased to his family members at the time of

death as 2000/- per month and applying the multiplier of 15 to it would be reasonable to calculate the loss of dependency which comes to Rs.2000 x 12 x 15 = 3,60,000/-. It is of course correct that to maintain himself the deceased would have spent on him 1/3 out of the earnings made by him. Thus, 1/3 amount is required to be deducted from the amount of Rs.3,60,000, which works out to Rs.1,20,000/- and the net amount payable to the plaintiffs under this head comes to Rs.2,40,000/-(3,60,000 - 1,20,000). It appears that the learned Tribunal awarded Rs.50,000/- as mental agony which is at the higher side and it is hereby reduced to Rs.25,000/- Thus, in all the plaintiffs' entitlement to the amount of compensation required to be paid by the defendants comes to Rs.240,000 + 25,000 = 2,65,000/- which the defendant respondents are liable to pay to plaintiff-appellants as compensation.

Point No.3 & 4

[28]

Now, the question which requires to be considered is as to whether the plaintiffs are to to paid interest or not on the compensation assessed. Normally, in compensation matters interest is paid unless there is some specific reason for not allowing the same. In the present case, I do not find any reason to disallow the prayer made in relation to award of interest and I am of the opinion that the plaintiffs are entitled for interest @6% per annum from the date of filing of the petition to the date of judgment passed by the trial Court. With regard to enhanced amount in relation to compensation, I deem it proper to pass an order to the effect that if within a period of two months from the receipt of the copy of the judgment the defendants do not make payment of enhanced amount to the plaintiffs then the plaintiffs shall be entitled to interest @ 6% till realization. The enhanced amount of compensation shall be deposited in the trial Court and the trial Court thereafter shall disburse the same amongst the plaintiffs.

The amount of Rs.20,000/- which has already been paid to the appellants shall be adjusted against the amount of compensation assessed in this appeal. The answer to the points No.2 & 3 is accordingly.

In view of foregoing discussions, the appeal is hereby allowed and the judgment of learned Court below awarding compensation is modified to the extent indicated hereinabove.

(SATYA PRAKASH PATHAK)J.

/jpa